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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMON DIAZ LEYVA,

Defendant and Appellant.

F064789

(Super. Ct. No. BF139687A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John R. Brownlee, Judge.

C. Athena Roussos, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Detjen, J., and Franson, J.

A jury convicted appellant, Ramon Diaz Leyva, of receiving a stolen vehicle (count 3/Pen. Code, § 496d, subd. (a)) and receiving stolen property (count 4/Pen. Code, § 496, subd. (a)).

On April 12, 2012, the court suspended imposition of sentence in count 3 and placed Leyva on probation for three years on the condition he serve his first year of probation in local custody. In count 4, the court ordered Leyva to serve one year in local custody but stayed the punishment imposed on that count.

On appeal, Leyva contends the court erred when it sustained his convictions on both counts. We will find merit to this contention and reverse Leyva's conviction on count 4. In all other respects, we affirm.

FACTS

Leyva was a driver for a trucking company owned by Cristina Athwal and her husband. The trucking company and Athwal's residence were located on the same property in Bakersfield. On September 12, 2011, at around 7:15 a.m., Athwal discovered that her H2 Hummer was missing from the garage and a purse containing her wallet, spare keys to her cars, and \$700 in cash were missing from the residence. Additionally, Athwal's Honda Accord was missing from the side of the house.

On September 13, 2011, Elizabeth Rosales found the Hummer parked in a garage at the apartment complex where she lived. The previous day, Leyva had been at the complex and asked her if the police had been around.

Kern County Sheriff's Deputies Ryan Sorrow and Charles Leask responded to the apartment complex. After speaking with Rosales, Leask looked around the complex and found Leyva sleeping in a van that was parked by the curb at the edge of the apartment complex's driveway. The deputy knocked on a side window and woke Leyva up. After Leyva opened the door, Leask noticed two headrests that looked like they came from the Hummer. Leask arrested Leyva, searched the van, and found a DVD player with a

Hummer logo located under the headrests. Later, Athwal and her husband went to the apartment complex and identified the Hummer, the headrests, and the DVD player as belonging to them.

DISCUSSION

Leyva contends one of his two convictions must be reversed because the prosecution failed to prove that the property subject to those counts was received on different occasions. We agree.

“Where a defendant receives multiple articles of stolen property at the same time, this amounts to but one offense of receiving stolen property. [Citations.] As the California Supreme Court explained in [*People v. Smith* (1945) 26 Cal.2d 854], this circumstance is comparable to the crime of larceny, ‘which authorities hold that the theft of several articles at one and the same time constitutes but one offense although such articles belong to several different owners.’ [*Id.* at p. 859.]” (*People v. Mitchell* (2008) 164 Cal.App.4th 442, 461-462.)

Here, the day after the thefts from Athwal, Leyva was in possession of the stolen Hummer and the headrests and DVD player that were taken from the Hummer. Further, nothing in the record indicates that he came into possession of these items at different times.

Respondent cites *People v. Morelos* (2008) 168 Cal.App.4th 758 (*Morelos*) to contend Leyva was properly convicted of two counts of receiving stolen property. In *Morelos*, the defendants were convicted of multiple counts of receiving stolen property based on their possession of property stolen from multiple victims. In rejecting the defendants’ contention that the evidence did not support multiple convictions for receiving stolen property, this court stated:

“Here, where the receiving counts involve different property stolen from different victims at different times and where nothing in the record shows [the defendants] received the property on a single occasion, ‘the record

reasonably supports the inference that appellant[s] received the various stolen goods at different times and in different transactions.’ [Citation.] Conviction of and sentencing on all the receiving counts were proper as to each.” (*Morelos*, *supra*, 168 Cal.App.4th at p. 763.)

Morelos is easily distinguishable because, here, all the stolen property Leyva received was stolen at the same time, from the same location and same two victims, and Leyva was in possession of this property within a day after it was stolen. Further, the stolen headrests and DVD player were originally part of the stolen Hummer. These circumstances strongly indicate that Leyva received the stolen items together while the headrests and DVD player were still attached to the Hummer. Therefore, we conclude Leyva could only be convicted on one count of receiving stolen property because his simultaneous possession of three stolen items constituted only one offense.

DISPOSITION

Leyva’s conviction for possession of stolen property in count 4 is reversed. As modified, the judgment is affirmed.